

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 171 OF 2007

M/S. NATIONAL LIQUOR AND GENERAL
STORES THROUGH ITS PROPRIETOR MR.
RAMESH BHAKTA

... Applicant

Versus

MR. DIAGO MINGUEL FERNANDES

... Respondent

Ms. Sweta Naik, Advocate for the Applicant.

Mr. R. S. Sardesai, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 19th July, 2007

P.C.:-

Heard the learned Counsel on behalf of both the parties.

Special Leave to Appeal is granted.

Appeal be registered.

By consent appeal is heard forthwith.

The complainant was absent on 2-1-2006 at a time when the case was fixed for complainant's evidence and the learned J.M.F.C. although exempted the complainant, on application filed, rejected complainant's request for deferring the recording of his evidence. It is but obvious that the complainant having been exempted, the complainant's case could not have been closed. On 17-2-2006, the case was posted for defence evidence but as the complainant nor the complainant's Counsel were present on this day the complaint came to be dismissed and the accused discharged(sic. acquitted). The learned Counsel for the complainant has filed an affidavit stating that the complaint came to be dismissed at 10.00 a.m. on 17-2-2006. This fact is not disputed on behalf of the accused. In any event, it may be observed that the learned Counsel for the complainant was present before the Court at 10.00 a.m. and the

complainant's presence was not necessary as the case was fixed for defence evidence and in that view of the matter the learned J.M.F.C. was not justified in dismissing the complaint for default of appearance of the complainant.

Consequently, the appeal is allowed. The Orders dated 2-1-2006 and 17-2-2006 of the learned J.M.F.C. are hereby set aside and the complaint is restored to file. The learned J.M.F.C. is hereby directed to proceed with the said complaint in accordance with law. Both the parties are hereby directed to remain present before the learned J.M.F.C., Mapusa on 20th August, 2007 at 10.00 a.m.

N. A. BRITTO, J.

RD.